1948

File No. O. Tenancy 148 — Pt. II

Legal DEPARTMENT

A BRANCH

K

M 2511

Subject:—

Opinions under the Bombay Tenancy Act, 1939.

E-33 E

File No. O. Tenancy / ~~148~~ 48 Pt. II

Std. Sectt. Slip 24 B e.

65-A

C O N T E N T S.

Legal Department File No. 40 Tenancy/43 Part II.

Sr No.	Compilation No.	Subject	pages.
1	CN. 8884 10/8/43	Bombay Tenancy Act, 1939,- S.c 20- payment of rent to land-lord within a specified line-whether tenant can be evicted for failure to do so.	1 - 4
2.	CN. 8946 21-8-43	Sec 2 3(2)- Whether Govt. can entertain revision application against the order of Collr.	5 - 6
3.	CN. 8948 21-8-43	Sec 23-whether the Sub-tenant is entitled to the benefits under the	7
4.	CN. 8930 20-8-43	Whether appeal lees against the order of the Magistrate	9.
5.	CN.8978 18-8-43	Civil Proc. Code -Rules 97-103-Execution of an order granting possession when enstructed by a tenant	11
6.	CN. 9080 23-8-43	Sec 14(1)- whether a Talukdar can recover Legal Cess.	13
7.	CN.8618 10-7-43	Sec 4(2)- whether Mamlatdar can reject the application of a tenant without recording his Statement	15
8.	CN.8882 13-8-43	Sec 2(12) Application of definition "year" Interpretation of	17
9.	CN. 8958 21-8-43	whether Govt. can direct the D.D.C. to readmit the appeals of the Land lord not withstanding the expiry of t of the limitation for appeal	19
10.	CN. 9316 4-10-43	Sec 24(1)-Jurisdiction of the Mamlatdar to entertain applications for possessions from persons entitled to possession of any land under the -	21 - 26
11.	CN. 7163 30-7-43	Vatan Lands-Principle regarding ceasing of tenure.	27 -
12.	CN. 10312 4-11-43	Bombay Acts II &VII of 1863 whether Sec. 3(3) whether lands can be resumed and the persons wrongfully in occupation can be evicted and rent recovered from them	29 -

P.T.O.

C O N T E N T S.

Legal Department File No. 10 Tenancy/48 Part II

Sr. No.	Compilation No.	Subject.	pages.
13	ON. 9851 21-10-48	Sec. 4(2)- Issue of notice -whether failure on the part of the tenant entitle him to claim restoration.	31 -
14.	ON. 10426 6-11-48	Sec 23(5) & 24(1-A)- Eviction of the protected tenant under an order of a Civil Court.	33 - 36
15.	ON. 9254 30-9-48	Sec. 7(1)- Termination of tenancy of an ordinary tenant or protected tenant by issuing a year's notice.	37 -
16.	ON. 10809 17-11-48	Sec. 23- Interpretation of the expression ordinary agricultural tenancy.	39 -
17.	ON. 10859 18-11-48	Sec 22(2)- whether the 2nd class Magistrate is competent to hear the complaint,	41 - 4
18.	ON. 10039 27-10-48	Sec 12(11)- Right to plead for the tenant before the Mahalkari	43 -
19.	ON. 11593 7-12-48	whether the applicant can appeal against the order of acquittal.	45 -
20.	ON. 11912 15-12-48	Sec 7(1) & 24(1A)- whether the Aval Kakkun has jurisdiction to entertain ~~to entertain~~ the application.	47 -
21.	ONM.12015 17-12-48	Sec. 24(5)- whether T.A. karkun can pass Orders of eviction	49 -
22.	ONa.10423 6-11-48	Sec. 4- Restoration of Lands to the protected tenants -	51 -
23.	ON. 9921 23-10-48	Sec 7(1) & 24(1-A) Termination of Tenancy whether the Landlord can sue for possession.	55 -
24.	ON. 11909 15-12-48	whether the B'bay T.Act applies to lands held on lease from the Crown.	57 -
25.	ON. 12328 27-12-48	whether the B.T. Act applies to Mulgeni Tenures.	59 -
26.	ON. 10175 29-10-48	Sec. 3, 4(2), 5(2) and 24(1-A) - whether protected	

P.T.O.

C O N T E N T S.

Legal Department File No. 10. Tenancy/48 Part II

Sr. No.	Compilation No.	Subject.	page
26.	(contd)	tenancy is affected by adverse judgement of H. Court.	61 - 65
27.	ON. 10637 15-11-48	Sec. 24(1) Eviction of tenant by persons other than the Landlords.	65 -
28.	ON. 11765 9-12-48	Secs. 7(1), 10 & 18(4) Trials of possessory suits by Mamlatdar whether landlord can terminate the tenancy of protected tenants.	67 -
29.	ON. 11217 29-11-48	Sec. 16(1)- Remission of revenue to the Khatedars.	69 -
30.	ON. 12161 22-12-48	Sec 16- Grant of remission of land revenue.	71 -
31.	ON. 12260 24-12-48	Sec. 7- whether the mamlatdar has jurisdiction to order the eviction of the tenant.	73 -
32.	ON. 12397 29-12-48	Sec 3(a)- The rights of protected tenant under he -	75 - 77
33.			

L.V.G./15-5

SC.

(1)
(4)

R.D. No. 2623, dt. 2.8.48.

Submitted.

2. It appears that one RameshandraBaji Sawant made an application to the Mahalkari Kankavali for possession of his land on the ground that his tenant (Baliram Laxman Sawant) had failed to pay the rent for the years 1944-47. The Mahalkari of Kankavali on 23-3-1948 by an interim order under section 20 of the Bombay Tenancy Act, 1939, directed the tenant to pay the rents only for the year 1946-47 within a period of 15 days from the date of that order or to furnish security for the same within that period failling which possession would be handed over to the landlord. The tenant failed to pay the rent or furnish the security and the Mahalkari on 26-4-1948 passed an order of possession under section 24(1-A) of the Act in favour of the landlord. The Collector of Ratnagiri considers that the Mahalkari was acting under the Tenancy Act and that no order under section 19 of the Mamlatdar's Courts Act, 1906, was passed and therefore the order is improper and requires to be quashed. The R.D. is of opinion that since the Mahalkari exercises the Mamlatdars' Courts Act he entertained the possessory suit under the Mamlatdar's' Courts Act and that therefore the Mahalkari's order is correct.

Sd/-

A.L.R. Reply may be:-

Seen and returned.

In view of the order made by the Mahalkari under section 20 of the Bom. Tenancy Act, 1939 there would be no objection to treating his order of eviction as passed by him as a convert under the Mamlatdars' Courts Act, 1906.

R.L.A. Sd/- P.M.LAD

Bombay Tenancy Act, 1939.
S.20
Whether the order of the Mahalkari Terminating tenancy is correct.

K.V.G/19-8-48.

P.T.O

R.T.C. 2/9

R.D.No. 10800 dt. 26-8-48.

It is clear that the application was filed in the Court of the Mamlatdar, Jalgaon, who had jurisdiction to entertain it. The Mamlatdar treated it as a suit filed in the Court of the Mamlatdar. The Mamlatdar having entertained the tenancy suit in exercise of members under the Bom. Mamlatdar 's Cour Courts Act, the question of his proceeding under §4(2) of the Bom. Tenancy Act would not be material (Cf. R.L.A's No. 3084 dt. 30-8-1948). The view expressed by the R.D. that Govt.cannot entertain devisies application is correct (See. Sect. 23(3)). The papers may, therefore, be returned with the remark "Seen and returned".

Sd/- 15/9

A.L.R. R.T.C. 16/9

R.L.A. Sd/- P.M.LAD. 18/9

U.O.R. to R.D. No. 8946, dated 21-9-1948.

K.V.G./19-5

4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939. Section 23 whether sub-tenant entitled to the benefit of

"Every lessee, however short his term may be and even a tenant from year to year may make a sub-lease unless and except where, which frequently happens, he is restrained by the contract of tenancy from sub-letting or restricted in his power of sub-letting, by a requirement, either absolute or qualified, that the consent of the landlord must be first obtained. As there is no privity of contract between a sub-lessee and the original lessor, a sub-lessee cannot enforce the convenants in the original lease either directly or by compelling his immediate lessor to sue". (see Woodfall's Law of Landlord and Tenant p.338). A sub-tenant cannot be entitled to the benefit of section 23 of the Bombay Tenancy Act, 1939 for two reasons: (1) By virtue of section 5(2)(d) a tenant is restrained from sub-letting and (2) the benefit of section 23 which would be deemed to be a statutory covenant in the original lease would not be available to the sub-tenant for want of a privity of contract between him and the original lessor.

Sd/- P.M.L.A.D.
20/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8948, dated September 1948.

Office of the R.L.A.

Bombay Tenancy Act, 1948.
Resort to Criminal instead of Civil Proceedings by Landlords.
Moving High Court as test case.

There is no case for appeal or revision against the order of the Magistrate since that order is in favour of the tenant. We might make a test case wherein a tenant is convicted so that it might be contended that the Magistrate was wrong in assuming jurisdiction where the dispute was of a Civil nature.

Sd/- R.M.L.A.D.
20/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 8950, dated the 20th September 1948.

K.V.G./19-5
4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939.
Civil Procedure Code.
O 21. Rules 97-103

Execution of an order granting possession when obstructed.

Since Pandurang Chimanji was not a party to the proceedings, the order passed by the Tenancy Aval Karkun cannot be executed against him and the possession of the land restored to the tenant. As Pandurang Chimanji is obstructing the execution of the order of the Tenancy Aval Karkun, the proper course for the tenant would be to apply to the ~~Civil Court for the tenant would be to apply to the~~ Civil Court for the execution of the order as a decree and the Civil Court, after holding an inquiry under rules 97 to 103 of Order 21 C.P.C., will decide whether or not Pandurang's obstruction to execution is lawful. The Bombay Tenancy Act, 1939 does not prescribe any such inquiry and consequently no relief can be granted to the tenant by Government.

Sd/- P.B.LAD.
16/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8878, dated 16th September 1948.

K.V.G./19-5

4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939 Section 14(1)

Whether a Talukdar can recover Local Fund Cess.

Seen and returned.

2. The view expressed by the Collector of Ahmedabad in his letter No. T.S.O.(A), dated the 14th July 1948 and by the Commissioner, Northern Division in his endorsement No. N.T.A. dated the 14th August 1948 is correct (Cf. R.L.A's No. 6138) dated the 13th June 1947).

Sd/- P.M.LAD. 22/9

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9050, dated the 23rd September 1948.

(MISS) K.V.G./19-8

4C.

Office of the R.L.A.

Notice to the landlord under section 4(2) The Bombay Tenancy Act, 1939.

Rule 14 of the Bombay Tenancy Rules, 1947 is mandatory and the Mamlatdar should not have rejected the application of the tenant without recording the tenants statement that no notice was given to the landlord under section 4(2) of the Bombay Tenancy Act, 1939. Since however it is an admitted fact that the tenant gave no such notice, the application will have to be ultimately rejected by the Mamlatdar even if Government restores the application in exercise of their revisional powers. Consequently, the order of the Mamlatdar need not be interfered with by Government.

Sd/- P.M.LAD.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 8618, dated 10th September 1948.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

Application of definition "year" in sec. 2(12).

It appears that in view of the definition of the term "year" in section 2(12) of the Bombay Tenancy Act, 1939, the Collector of Surat presumes that under sub-clauses (a)(i) and (a)(ii) of section 3 of the period of six years is to be counted from 1-4-1931 to 1-1-193[illegible] and 1-4-1938 to 1-1-1945 respectively and not from 1-1-1932 to 1-1-193[illegible] and 1-1-1939 to 1-1-1945 respectively. R.D. is inclined to agree with the Collector's view. R.L.A. is requested to advise whether the Collector's interpretation is correct.

2. The definition of "year" in section 2(12) of the Bombay Tenancy Act, 1939, will apply unless there is anything repugnant in the subject or context. In clause (a) of section 3 the period of tenancy to entitle tenants to the status of protected tenants is stated to be six years immediately preceding either (i) the first day of January 1938, or (ii) the first day of January 1945. To import the definition of "year" in section 2(12) into section 3(a) would be repugnant to the subject or context, especially in view of the words "immediately preceding". Consequently in interpreting clause (a) of section 3 the definition of "year" in section 2(12) cannot be resorted to. The period of six years under section 3(a) is to be counted back from 1st day of January 1945 in cases falling under sub-clause (ii). Obviously, therefore, on so computing the period of six years under sub-clause (i) will be from 31st December 1931

Sub-clause (i) and from the 1st day of Jan., 1945 in cases falling under

to 1-1-1938 and under sub-clause (ii) it will be from 31st December 1938 to 1-1-1945 respectively. According to this interpretation of section 3(a) the view taken by the Collector of Surat would not be correct.

Sd/- P.M.LAD.
11/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8658, dated 13th September 1943.

(MISS) KV.C./1943

4C.

Office of the R.L.A.

By pronouncing the decisions in the absence of the parties the Aval Karkun has deprived the landlord of his right to appeal in time; and on the principle "Actus Curie Neminem Gravalsit" (An act of the Court shall prejudice no man) it would be open to Government to direct the D.C. to readmit the appeals of the landlord notwithstanding the expiry of the limitation for appeal. Since however Government has power to revise the order of the Tenancy Aval Karkun, Government may, instead of directing the restoration of appeal, consider in revision whether those orders of the Aval Karkun are correct.

Sd/- R.H.L.A.D. 20/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8839, dated the 21st September 1948.

R.V.S./ 18-9

4C.

(21)
(26)

L.D.R.I. No. 5842/48.

Submitted.

2. The facts are stated in the order of the Mamlatdar, Pardi on Tenancy Application No. 4 of 1945.

Kunversha Limjibhai (for Kunvershaw Edalji) filed two applications No. 40 and 45 in the Court of the Mamlatdar Pardi on 30.9.1944 contending that since his tenant Hira Jamma had failed to pay crop-share and rent as agreed upon for the year 1943-44 in respect of his lands bearing S.Nos. 281/5, 434/1, 440, 445, 446 and 446 of Sukhej and S. No. 278/2 of Sondhalwada he should be evicted. The Mamlatdar of Pardi who decided the application on 24-6-1946 held that the tenant was a protected tenant in respect of S. Nos. 440, 445, 446 and 447 of Sukhesh and 288/2 of Sondhalwada and an ordinary tenant in respect of the remaining S. Nos. and order that the landlord be put into possession of the lands in respect of which the tenant was considered to be a protected tenant. Regarding the other S.Nos. i.e. 281/5, 434/1 and 278/2 he directed that the landlord might if advised to file a suit under the Mamlatdars Court Act for recovery of possession.

Against this order the tenant Hira Jamma preferred two appeals to the D.D. Collector, Bulsar, Prant. In appeal No. 5 of 1946 the D.D.C. on 12-12-1946 held that -

"From the record and proceedings of the case it is clear that respondent is an ordinary tenant of the appellant in respect of S.Nos. 281/5, 434/I and 425/I. Mamlatdar has therefore

P.T.O.

rightly held that the tenancy in case of these S. Nos. cannot be terminated under section 25 of the Tenancy Act. The appeal is therefore rejected and the Mamletdar's order confirmed."

In respect of appeal No. 6 he ordered that:

"It is therefore, hereby ordered that the Mamletdar's order dated 24-8-1946 holding the applicant to be protected tenant in respect of lands bearing S. Nos. 440, 445, 446 and 447 of Sukhesh and 273/2 of Sondhalwada and directing to hand over possession of these S. Nos. to the respondents is hereby set aside as this matter is complicated and sub-judice before the Debt-adjustment Board.

The Mamletdar's decision that the appellant is an ordinary tenant in respect of S. Nos. 281/5, 434/1 and 428/1 and the tenancy should not be terminated is hereby confirmed."

Against the orders of the D.P.C. Dulsar the landlord filed two revision applications to the Commissioner S.D. One in respect of S.Nos. 440, 445, 446, 447 and 273/2 and the other in respect of S. No. 281/5, 434/1 and 428/1. The Commissioner considers that there is no reason to interfere with the order passed by the P.C. on appeal and has submitted the applications to Government.

On this case the S.D. considers that:

"The case has been dealt with by the Mamletdar and the P.C. under s.24 of the Bombay Tenancy Act as it stood before the amendment of 1946. Sub-section (1) of section 24 vests in the Mamletdar and P.C. jurisdiction to entertain applications for possession from persons entitled to possession of any land under the provisions of the Bombay Tenancy Act and it did not presumably cover a case under section 5(2)(6) of the B.T. Act as it then stood. From this point of view neither

[1] The section contemplates possession under section 4[7] of the Bombay Tenancy Act.

K.V.O/28

the Mamletdar of Pardi nor the P.O. had jurisdiction to entertain the landlord 's application for possession of land for non-payment of rent by the tenant concerned. The R.L.A. may be requested to advise whehter the view taken above is correct."

Papers are accordingly referred to the R.L.A. for advice.

3. Section 20 of the Bombay Tenancy Act provides for relief against termination of any tenancy of any tenant (whether protected or ordinary) by a Court. Section 5(2)(6) provides that the tenancy of a protected tenant shall not be terminated unless he fails to pay the rent within particular time provided for therein. Section 24(1) (before it was amended by BOM. 26 of 1946) provided that:

"A person entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamletdar in whose jurisdiction such land or dwelling house is situated. The application shall be made in such form as may be prescribed."

The person - which term would include both a landlord and tenant can be said to been titled to ppssecssion when:

(1) under section 4(2) if he is a protected tenant within the meaning of section 4(1) and is evicted by the landlord;

(2) under section 7(1) the landlord terminates the tenancy and if any of the conditions in the proviso to sub-section (2) thereof are fulfilled; or

(3) the Civil Court or a Mamlatdar's Court by an order passed under section 20 directs that the tenancy has or has not terminated on the grounds specified in section 5(2).

It is therefore clear that before a Mamletdar

P.T.O.

Could entertain an application for possession under section 24 whether of a protected or ordinary tenant there must be in force a Civil or Mamlatdar 's Courts' order under section 20 terminating the tenancy for non-payment of rent under section 6(2)(b). The Mamlatdar in the present case had therefore no jurisdiction to decide the possessory suit and consequently his order terminating of the protected tenancy is improper. so also the order on appeal by the D.D.C. Dulear Pant so far as regards the protected tenancy. It may be therefore set aside by Government.

Sd/- 24/8

The facts are stated in the above note. The view expressed in the R.D. office note is that under sec. 24(1) of the Bom. Tenancy Act, 1939, as it stood before the amendment of 1946, neither the Mamlatdar of Pardi nor the Prant Officer had jurisdiction to entertain the landlord's application for possession of the land by the landlord on the ground of non-payment of rent by the tenant concerned. The R.L.A. is requested to advise whether the R.D. office view is correct.

Section 5(2) of the Bombay Tenancy Act, 1939, as it stood before its amendment by Act, XXVI of 1946, provided that notwithstanding any agreement, usage, decree or order of a Court of land, the tenancy of any land held by a protected tenant committed any default as described in any of the clauses (a) to (e)- so such tenant shall not be terminated unless such tenant

Section 20, (as it stood prior to amendment of 1946) provided:-

"Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord sues or files any proceeding to eject the tenant, if at the

time of hearing of such suit or proceeding the tenant tenders to the landlord the rent in arrears together with the cost of the suit or proceeding, or gives such security as the Court thinks fit for making such payment within fifteen days, the Court may, in lieu of making a decree or passing an order for ejectment pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated".

This provision contemplates that a landlord can sue either in the Civil Court or in the Mamlatdar's Court for possession of his lands on theground of termination of tenancy. In short, sec. 20 retained the jurisdiction of the Civil Court and of the Mamlatdar's Court for awarding possession to a landlord on the ground of termination of tenancy. In the present case, the applicant landlord filled theka tenancy suit in the Court of the Mahalkari of Pardi, which had the jurisdiction to entertain such suit. It, however, and this appears clear from his findings on issued No. 4.

The defaults committed under sec. 5(2) would have the effect of termination of tenancy by the landlord. But the landlord cannot obtain possession except by proceedings for ejectment of thetenant in which proceedings the termination of the tenancy will have to be proved. The landlord could not apply for possession under sec. 24(1) (as it stood before it amendment in 1946) to the Mamlatdar under the Act, for the powers of the Mamlatdar's under the Act do not include the powers of the Mamlatdar's Court under sec. 20 of the Act. Sec. 24(1) did not give jurisdiction to the Mamlatdar to decide the right between the parties and to award possession. As the Mamlatdar was not competent to award possession under sec. 20 on the ground of termination of protected tenancy, his order appears to be ultra vires..

sd/-

26

..L.R. Reply may be:-

Seen and returned.

The view taken by R.D. is correct.

Sd/- R.T.C. 20/9

R.L.A. P.M.LAD.
20/9

U.O.R. to R.D. No. 9345 dt. 4-10-43.

K.V.S./18-9

4C.

Office of the R.L.A.

The general principle of law is that when the principal tenure ceases to exist, all under tenures must come to an end. Under tenures cannot survive the extinguishment of the principal tenure. This principle has been applied in the case of alienated lands such as Saranjams (Secretary of State v. Girjabai L.R. 54 I.A. 369). The same principle will apply to vatan lands. No question of overriding the provisions of the Bombay Hereditary Offices Act, 1874, by the provisions of the Bombay Tenancy Act, 1939, arises or need be considered.

Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 7163, dated the 30th July 1943.

(MIC.) K.V.C./18-8

4C.

R.L.A.'s Office.

Application of Bombay Tenancy Act, 1939 to shetsanadi lands.

The lands in dispute are shetsanadi and have been assigned for the performance of the Sanadi service which is being performed. They are therefore inalienable. The leases executed by the holder in respect of them are void and do not create any interest in favour of the alienees. The alienees are not tenants within the meaning of the Bombay Tenancy Act, 1939, and cannot therefore claim the right of protected tenants. The continuance of the lands is to be governed by rules made by Government Resolution (R.D.) No. 10336 of 1908 made by Government in exercise of their powers conferred by sections 8 and 10 of Schedule B of Act XI of 1852, and section 2(3) of Bombay Acts II and VII of 1863. Under rules 4 and 6 of the said rules the lands can be resumed and the persons wrongfully in occupation can be summarily evicted or full rent can be recovered from them. No question of the application of the Bombay Tenancy Act arises.

Sd/-

Additional Secretary to Government

U.R. to R.D., No. 10312, dated the 4th November 1948.

(Miss) K.V.C./15-5

4C.

Office of the R.L.A.

Proper intimation or notice under section 4(2) of the Bombay Tenancy Act, 1939, is a condition precedent and unless such intimation or notice is given, the tenant would not be entitled to claim restoration; and it is immaterial whether the eviction of the tenant was bona fide or mala fide.

Sd/- P.N.LAD.
20/10

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9851, dated the 21st October 1948.

K.V.G./18-5 4C.

p.33 to 36

Messers Tangeva and Girijeva had obtained an exparte-decree against one Mr. Deshpande Occupant of S.No. 7 of Nilwali and took possession thereof non 23-6-1944. After Mr. Deshpande knew about the exparte decree he approached the Civil Court and get it set aside and in the original suit against Tangeva and Girijeva, the tenant-Devappa was added a party and possession of the said S.No. was decreed given to him on 28-10-1947, through Court Bailiff. Tangeva and Girijeva had in the meantime leased out the said S. No. 7 to one Devappa Payakappa for the season 1945-46. The tenant however did not hand over physical possession and proceedings under sec. 145 Cr. P.C. were started at the instance of Mr. Deshpande. Mr. Deshpande subsequently made an application in the Court of the Mamlatdar Haliyal on 5-11-1947 requesting that Mr. Devappa may not be declared as protected tenant and for possession of the said land. The Mamlatdar who heard the application held that although the tenant could not be deemed to be a protected tenant his tenancy could not be terminated under sec. 23(2) of the Bombay Tenancy Act and that in the absence of proceedings under section 24(1-A) the eviction of the tenant under an order of a Civil Court was ultra-vires. He therefore declared Devappa to be tenant under section 2-A on 15-3-1948. The appeal preferred by Mr. Deshpande confirmed the order of the Mamlatdar. Mr. Deshpande has now approached Govt. in revision under sec. 28 for reversing the order of the Mamlatdar of Haliyal

The grant-officer, K.D. Kanara who heard.

P.T.-

mainly on the grounds that

(1) the tenant has derived his title under a trespasser; and

(2) that he has already been awarded possession by a Civil Court. The Collr. of Kanara considers that since Mr. Deshpande did not take proceedings under sec. 24(1-A) and the tenant has under sec. 3-A of the Act acquired rights of protected tenancy the orders of the Mamlatdar of Haliyal and the order of Prant Officer on appeal are correct.

The R.D. considers that in view of R.L.A's opinion No. 6465, dated 9-7-1948 the only remedy of the tenant in this case was to approach the Civil Court for restoration of possession and that the orders of the Mamlatdar of Haliyal and the Prant Officer, K.D. Kanara will have to be quashed.

Sd/- 30/10

A.L.R. Reply may be:-

Seen and returned.

The view taken by R.D. is correct.

Sd/- R.T.C. 4/11

R.L.A. Sd/- P.M.LAD. 4/11

U.O.R. to R.D. No. 10426 dt. 6-11-48

(Miss) K.V.G.

18-5 4C

Office of the R.L.A.

Protected tenancy.

Termination of--

Section 7(1) The Bombay Tenancy Act, 1939.

A year's notice in writing would be sufficient to terminate an ordinary agricultural tenancy as well as a protected tenancy under section 7(1). If a protected tenancy can be terminated by a year's notice so given should not be considered adequate to terminate the ordinary tenancy pending it a ripening into a protected tenancy. The view taken by the Collector, Satara, is not correct.

Sd/- R.H.LAD.
28/3

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9254, dated the 30th September 1948.

(Miss) K.V.G./18-5

4C.

Office of the R.L.A.

The expression "Ordinary agricultural tenancy" in R.L.A's opinion No. 9284, dated 30-9-1948 was intended to cover only tenants under section 2A who, by virtue of section 3A, would become protected tenants after the expiry of one year etc. To remove any doubt that the opinion is likely to be construed as applying even to tenants falling under section 23 the words "other than tenancy falling under section 23" may be inserted after the words "an ordinary agricultural tenancy".

Sd/- P.M.L.A.D.
16/11

Remembrancer of Legal Affairs.

U.O. to R.D., No. 10609, dated the 17th November 1948.

(Miss) K.V.G./18-5

L.D.R.I. No. 12541
Dated 7-10-1948

Submitted.

Please see R.D. note at pp. 5-6 ante. Mr. Nabar of Shiroda, taluka Vengurla, Ratnagiri District, in his application states that one Babi Appa Parab had filed a criminal case against R.D. Nagarkar in the Court of the 2nd class Magistrate, Vengurla under section 22 of the Bombay Tenancy Act, 1939 for failure to give in the prescribed form a written receipt for the rent received from him from the complainant. He argues that as the 2nd class Magistrate, Vengurla has not been specifically empowered under section 28A, he was not competent to entertain the complaint under section 22 of the Act. R.D. is of the view that section 28A has nothing to do with the power of the Magistrate to entertain complaints under section 22 and since the offence under section 22 is punishable with fine only it can be tried by any Magistrate in accordance with the provisions of schedule II to the Criminal Procedure Code. R.D. therefore proposes to inform Mr. Nabar that the 2nd class Magistrate was competent to hear the complaint under section 22 of the Bombay Tenancy Act. The R.L.A. is requested to advise in the matter.

2. Under sub-section (2) of section 22 of the Bombay Tenancy Act, 1939 every landlord is required to give a written receipt for the amount of rent received by him in respect of any land in such form and insuch manner as may be prescribed. Sub-section (3) provides that any person who fails to give a written receipt for the amount of rent received by him shall on conviction be punishable with fine which may extend to Rs. 100/-. Sub-section (1) of section (5) of the Code of Criminal Procedure provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained. Sub-section (2) provides that all offences under any other

P.T.O.

_aw shall be investigated inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The offences under section 22 of the Bombay Tenancy Act, 1939 being offences under any other law will have to be dealt with under the Code. Under section 32(1)(b) of the Code Second Class Magistrate may pass the sentence of fine not exceeding two hundred rupees. Since an offence under this section is punishable with fine not exceeding Rs. 100, the Second Class Magistrate Vengurla, was competent to entertain the complaint in the present case. The view at A of R.D. note dated 29-9-1948 at pp. 5-6 ante is correct, and papers may be seen and returned.

Sd/- M.S.Nadkarni.
15/11

A.S.R.

As at A

Sd/- R.T.C. 16/4

R.L.A Sd/- P.M.LAD.
16/11

U.O.R. to R.D. No. 10855, dt. 18-11-48.

(Miss) K.V.G./1
18-8
4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939, Section 12.

Right to Plead.

It is true that a recognised agent has no right of audience that is to say right to plead in a court under Order III rule 1 of Civil Procedure Code (see 61 Cal. 324); but the Mahalkari in determining the reasonable rent under section 12 of the Bombay Tenancy Act, 1939 does not act as a court. Consequently there can be no objection to Mr. Suraiya pleading before the Mahalkari for the tenants if he is duly authorised by them under section 12(11), for by so pleading he will be merely acting as an agent of these tenants.

Sd/- R.K.LAD.
26/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10038, dated 27th October 1948.

K.V.G./10-5 4C.

Office of the R.L.A.

The reply proposed to be issued by R.D. to the applicant that he may prefer an appeal against the order of acquittal would not be in order as the right to appeal againstacquittal vests only in Government (see section 417, Cr. P.C.). In any case, the appeal is not now feasible, as limitation has expired.

Sd/- P.N.LAD
6/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11593, dated the 7th December 1948.

(Miss) K.V.G./18-5

4C.

L.D.R.I.No. 12748, dt. 11-12-4

Submitted.

One Kurbanhusain Mohomadali Bora of Dohad filed an application under S. 24 of the Bombay Tenancy Act, 1939 before the Tenancy Aval Karkun for possession of S. No. 213/A on the ground that he wanted the land for non-agricultural use after giving the requisite notice to the tenant under section 7. The Tenancy Aval Karkun entertained the application and passed an order granting possession to the applicant. Against the order of the Tenancy Aval Karkun the opponents filed an a peal to the District Deputy Collector who allowed the appeal on the ground that according to Govt. Circular No. 8528/45 dt. the 29th April 1946, the right of the landlord to obtain possession could only be decided by the Civil or the Mamlatdar's Court and that the Tenancy Aval Karkun had no jurisdiction to try the case. The aggrieved landlord has made a revision application to Govt. and the Revenue Department has referred the papers to R.L.A. for advice. The only point at issue is whether the Tenancy Aval Karkun had jurisdiction to entertain the application under S. 7(1) read with S. 24(1A) of the Bombay Tenancy Act, 1939 (vide R.D. note on p.19 ante).

Sd/- 13/12

Seen and returned.

The view of the Grant Officer is correct (cf R.L.A's No. 11905 dt. 9-12-48) A

Sd/- 13/12

A.L.R. ~~RxRxR~~
Sd/- 14/12

R.L.A. Sd/- P.M.LAD 14/12

U.O.R. to R.D. No. 11912, dt. 15-12-48.

K.V.G./13-5
4C.

Office of the R.L.A.

Bombay Tenancy Act. Sec. 24(5).

It is true that the orders of eviction passed b the Tenancy Awal Karkun, being without jurisdiction, are a nullity. However the landlords may involve the tenants in litigation by contending that those orders of the Tenancy Awal Karkun have the force of a decree under section 24(5) of the Bombay Tenancy A Act; and to avoid such litigation Government in exercise of powers vested under section 28 should set aside those orders and direct the landlords to Court.

Sd/- P.M.LAD
16/12
Remembrancer of Legal Affairs.

U.R. to R.D., No. 12015, dated the 17th December 194

"ias) K.V.G./18-5

4C.

L.D.R.I. No. 9284,
dt. 26-7-48.

Submitted.

One Tuka Shahu Ramoshi filed an application before the Tenancy Awal Karkun, Karad, for recovery of possessi of land comprised in S.No.- 284/1A+ 2B+8A on the ground that he was a protected tenant and was evicted otherwise thahby an order of a competent court and that the land was leased to one Babu Phendi Pawar. The Tenancy Awal Karkun who tried the case held that the applicant was a protected tenant and that he was evicted by the landlor in 1945-46 otherwise than by an order of the Court. He, however, refused restoration of possession on the ground that the landlord was personally cultivating the land; Th the tenants to whom he had leased it in 1946-47 and 1947-48 had ceased to hold it and that section 4 did not appl to the case (vide order of the Tenancy Awal Karkun dt. 29-11-47 at slip A in case papers).

Against this decision of the Tenancy Awal Karkun Tuka Shahu Ramoshi preferred an appeal to the Dist. Deputy Collector, Karad. The Dist. Deputy Collector agreed with the finding of the Tenancy Awal Karkun that the tenant wa a protected tenant and was unlawfully evicted. As regard restoration of possession, however, he observed:

"The Tenancy Awal Karkun has refused restoration of possession of the suit land to the appellant on the ground of personal cultivation by respondent No. 1 by holding that the provisions of section 4 of the Act do not apply in this case. This finding of the Tenancy Awal Karkun is obviously wrong and perverse and inconsistant with his own finding on the fact about eviction. When the eviction isonce held to have been proved and possession of the suit land obtained by the respondent wrongfull any subsequent act on the part of the respondent in rega to the possession of the suit land must be held as illeg and wrongful. A lawful action cannot take its birth in

P.T.O.

52-54

unlawful one. The proper course for the landlord, therefore, to regularise and to make his possession legal for self-cultivation was to give one year's notice to the appllant under section 7(1) of the Act. The Tenancy Awal Karkun seems to have read the proviso to section 4(section 4(3)) independently of section 7(1), Both these sections have to be read together. Even for personal cultivation there must be a termination of the t enancy by a year's notice. The order of the Tenancy Awal Karkun is refusing to restore possession being wrong and illegal is set aside. The appeal is allowed and possession of the suit land viz. S.No. 284/1A+2B+3A of Karad ordered to be restored to the appllant etc." -(vide order at slip B in Case pp).

Against the decision of the Dist. Deputy Collr. the landlord has preferred an application to Govt. praying that the order of the D.D.C. be set aside. The tenant has also preferred a petition requesting that the landlord be ordered to pay him compensation under section 7(5) of the Tenancy Act. In its note at pp. 49-51 ante, the Revenue Department has considered the case and it is proposed to confirm the order of t he District Deputy Collector. Before doing so, however, the R.L.A. is requested to advise whether the view expressed in the R.D. note is correct.

Sd/- 30/10

A.A.S.

Reply may be-

"Seen and returned.

The new taken in the R.D. Office note smdt. 22-7-48 is correct."

Sd/- 3/11

ALR. RTC.4/11

R.L.A. P.M.BAD./4-11

UOR to R.D. No. 10423 dt 6-11-48

K.V.G./18-1

402

Office of the R.L.A.

On a notice being given under section 7(1) of the Bombay Tenancy Act terminating the tenancy, the tenant may or may not agree to surrender possession on the expiry of notice. In cases where the tenant agrees so to do, the landlord can take possession by applying to the Mamlatdar under section 24(1A); but in cases where the tenant does not agree, the only course open to the landlord would be to sue for possession either in the civil court or in the Court of the Mamlatdar and after obtaining a decree for possession, apply to the Mamlatdar for possession under section 24(1A).

Sd/- P.M.LAD
21/10

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9921, dated the 23rd October 1948.

(Miss) K.V.C./18-5

4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

Whether applicable to lands held on lease from the Crown.

Seen and returned.

2. The Bombay Tenancy Act does not apply to lands held on lease from the Crown (cf. sec. 85(1)). The view taken in para. 5 of the Public Works Department office note is correct.

Sd/- P.H.JAD
14/12

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 11909, dated the 15th December 1948.

(Miss) K.V.G./18-5

4C.

Office of the R.L.A.

Mulgeni Tenures

Bombay Tenancy Act, 1939, R.L.A's opinion No. 11762, dated 8-12-47

The view taken by D.D. in its office note at pages 25-27 is correct. It may however be pointed out that the recent decision of the Bombay High Court rejecting Government Criminal Appeal No. 533 of 1948 is likely to be construed as holding the Bombay Tenancy Act, 1939 inapplicable to Mulgeni Tenures. Until the point is finally and specifically decided by the High Court R.L.A's opinion No. 11762, dated 8th December 1947 may be followed.

Sd/- P.M.Lad
24/12
Remembrancer of Legal Affairs.

U.R. to R.D. No. 12328, dated the 27th December 1948.

L.V.G./1E-5

4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939. Sects. 3, 4(2), 5(2) and 24(1-A)

Whether protected tenancy is affected by adverse judgment of High Court.

A. This case raises an important and interesting point.

It is true that by virtue of the High Court decision in second appeal No. 618 of 1944 confirming the decree passed by the District Court in appeal No. 183 of 1942, the possession of the land by the tenant was wrongful with effect from the expiry of the notice given on 12-12-1939 and the tenant could have been evicted without any difficulty in execution of that decree of the High Court or immediately after that decree of the District Court passed in 1944. But unfortunately that decree of the High Court has been nullified by the application of the Bombay Tenancy Act, 1939, to the area in 1946. Admittedly the tenant was in possession of the land since 1923 and was therefore a protected tenant within the meaning of section 3 clause (a)(i) of the Bombay Tenancy Act, 1939, and consequently, even if he had been evicted from the land in pursuance of the decree either of the District Court or of the High Court, he would have been entitled to restoration under section 4(2) within one year from the date of the application of the Bombay Tenancy Act to the area concerned. Notwithstanding the decree of the High Court, the petitioner could not be entitled to evict the tenant except through the Mamlatdar under section 24(1A) of the Bombay Tenancy Act. Section 5(2) provides that notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a protected tenant as such tenant shall not be terminated unless such tenant has incurred any of the disabilities specified in clauses (a) to (e). In considering whether or not the

P.T.O

Protected tenant should be evicted, the Mamlatdar will have to ignore the decree of the Civil Court even if it bef of the High Court and consider whether or not the protected tenant has become liable to be evicted for any of the reasons mentioned in section 5(2). It is therefore clear that the petitioner would not be entitled to eviction of his tenant merely by virtue of the decree of the High Court since by the time that the decree could be executed in the ordinary course for evicting the tenant, the Bombay Tenancy Act has come to the rescue of the tenant and saves his tenancy. The view taken by the District Deputy Collector, Maval Prant, Poona, is correct.

Sd/- P.M.Lad
29/10/48

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10175, dated the 28th October 1948.

K.V.G./18-5

4C.

Eviction of tenant by persons other than the landlord.

Section 24(1) of the Bombay Tenancy Act, 1939.

A plain reading of the section 24(1) of the Bombay Tenancy Act, 1939, will show that the section is applicable only to those cases where the tenant is entitled to possession under any of the provisions of this act, for example section 4. The act does not guarantee undisturbed possession to the tenant from outsiders and if he is evicted by trespassers i.e. persons other than his landlords or those claiming through the landlords his appropriate remedy will be to approach the Civil or Mamlatdar's Court. The tenant in such cases will not be claiming possession of the land under the provisions of the Act but by virtue of his ordinary rights as tenant to be in undisturbed possession. Since the tenant in the present case was evicted by a person other than his landlord, he would not be entitled to restoration under section 24(1). The view taken by the Prant Officer is correct.

Sd/- P.B.Lad.
11/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10637, dated the 13th November 1948.

(Miss) K.V.U./12-5

40.

Office of the R.L.A.

Trial of possessory suits by Mamlatdars.

Bombay Tenancy Act, 1939. Sections 7(1), 10, 15(4).

R.L.A's opinion No. 4595, dated 12.5.48

Section 7(1) empowers the landlord to terminat the tenancy of a protected tenant by giving him one year's notice in writing stating therein the reasons for such termination if the landlord bona fide requi the land for any of the following purposes, namely : (a) for cultivating personally; or (b) for any non-agricultural purpose. Under section 10 sub-divi of a land held by a protected tenant makes the tenanc liable to termination. Under section 15(4), if the tenant fails to intimate his willingness to purchas the site within the time specified in sub-section (or fails to deposit the amount of the value within t time specified in sub-section (3) the tenant is dee to have relinquished his right of first option to purchase the site and the landlord is entitled to evict him. All these provisions contain grounds on which eviction can be sought and as pointed out in R.L.A's opinion No. 4595, dated the 12th May 1948 an several subsequent opinions, the landlord who wants obtain possession on the ground of termination of tenancy will have to approach a civil or Mamlatdar's court for the purpose. The circular No. 5328/45, dat 29th April 1948, will, therefore, also apply to suits under the sections mentioned in the R.D. note. The view taken by R.D. is correct. But the legal positi will change after the Bombay Tenancy and Agricultural Lands Act, 1948, comes into force; for under this Ac power to decide such claims vests not in the Civil Court but in the Mamlatdar or the Tribunal (see section 85).

Sd/- P.M.Lad
9/12

Remembrancer of Legal Affairs.

A.V.G./17-5 4C.

U.R.to R.D. No. 11705, dated the 9th December 1948

Office of the R.L.A.

Whatever may be the intention of Government in granting relief to the Khatedars, so long it is a remission of revenue, it would fall under section 16(1) of the Bombay Tenancy Act, 1939 and the tenants would be entitled to the benefit thereof; and no executive orders of Government can have the legal effect of depriving the tenants of such benefit. Consequently the proposed draft G.R. at p. 7 ante would not achieve the object which Government has in view.

Sd/- P.K.Laad
27/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11217 dated the 29th November 1948.

(Misc) K.V.C./17-5
4C.

Office of the R.L.A.

Once the remission of land revenue is granted it will ordinarily have the effect of extinguishing Government's claim to that extent and the subsequent revocation of the remission order cannot revive Government's claim. In this case, moreover, the Revenue Year in respect of which the remission of land revenue was ordered has already expired and even the accounts for that year have been closed. It would not, therefore, be fanni feasible to revoke the order granting remission, or at this stage to make the remission conditional. Attention is invited in this connection to R.L.A's opinion No. 11110, dated the 21st November 1947, wherein the insuperable difficulty of section 16 of the Bombay Tenancy Act was brought to the notice of the Revenue Department. The only course which now seems open is to promote legislation taking the remissions granted in this case out of the purview of section 16 of the Bombay Tenancy Act, 1939, and, if necessary, with reference to sub-section (5) of section 84(a) of the Land Revenue Code.

Sd/- P.M.Lad.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 12161 dated 22nd December 1948.

Kissl K.V.G./17-5
40.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

Section 7.

The order of the Mamlatdar is indefensible firstly on the ground that the Mamlatdar qua Mamlatdar had no jurisdiction to order the eviction to order the eviction of thetenant and secondly on the ground that the notice of termination of tenancy by the deceased for personal cultivation of the land would not ennure to the benefit of his widow.

Sd/- P. M.LAD
23/12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12256 dated the 24th December 1948.

K.V.G./17-5
4C.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

Section 3(a)

R.L.A's opinion No. 10175 dated 29.10.1948

To entitle to the right of a protected tenancy what is necessary under section 3 of the Bombay Tenancy Act, 1939, is that:

(a) the tenant must have held such land continuously for a period of not less than six years immediately preceding either:-

(i) the first day of January 1938, or

(ii) the first day of January 1945; and

(b) he has cultivated such land personally during the the aforesaid period.

2. In the present case the High Court held that the applicant's tenancy terminated on 31st March 1938. His possession subsequent to that date would not be that of a tenant and would not entitle him to the benefit of the Act. There being, therefore, no continuous possessio possession for a period of not less than six years ~~in~~ immediately preceding the first day of January 1938, the applicant would not be entitled to the benefit of a benefit of a protected tenancy under section 3, clause (a).

3. This case is distinguishable from the casesconsidered by the R.L.A. in his last opinion No. 10175, dated 29th October 1948, although the circumstances regarding the termination and the subsequent litigation appear to be similar. In that case the tenancy was terminated in 1940 and prior to it the tenant was in possession for a number of years. It would, therefore, be clear that he was in possession as a tenant continuously for a period of six years preceding the first day of January 1938 within the meaning of section 3, clause (a) of the Bombay Tenancy Act and consequently, he could claim the protection of the Act notwithstanding the decision of the Bombay High Court. In the present case, as stated above, the applicant has not been in possession

P.T.O.

76-78

as a tenant continuously for a period of not less than six years preceding the first day of January 1938. He would not, therefore, be entitled to the protection of the Act.

Sd/-P.K.LAD.
24/12
Remembrancer of Legal Affairs.

U.R. to R.D. No. 12397 dated the 29th December 1948.

K.V.G./17-8

4C.